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**RECEIVED**

JAN 23 2008 *sent*  
JAN 23 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

MILTON DOWELL

Name

# 11920-424

Person Identification/Booking No.  
MEDICAL CENTER FOR FEDERAL PRISONERS  
P.O. BOX 4000 SPRINGFIELD, MO. 65801-4000

ADDRESS or PLACE OF CONFINEMENT

NOTE: If represented by an attorney;  
his name, address & telephone number.

NOTE: It is your responsibility to notify the Clerk  
of Court in writing of any change of address.

**UNITED STATES DISTRICT COURT**

FOR THE ~~NORTHERN~~ NORTHERN  
DISTRICT OF ~~ILLINOIS~~ ILLINOIS  
EASTERN DIVISION

MILTON DOWELL

FULL NAME (Include name under which you  
were convicted) **Petitioner**,

CASE No.

To be supplied by the clerk of  
the United States District Ct.

VS.

CASE No.

99-CR-555-1  
Criminal case under which  
sentence was imposed.

MARTY C. ANDERSON

NAME OF WARDEN, (or other authorized person  
having custody of petitioner)  
**Respondent.**

**PETITION FOR WRIT OF HABEAS CORPUS BY A  
PERSON IN FEDERAL CUSTODY (28 U.S.C. § 2241)**

**INSTRUCTIONS READ CAREFULLY**

This petition shall be legibly handwritten or typewritten, signed by the petitioner,  
under penalty of perjury. You must set forth **CONCISELY** the answer to each question  
in the proper space on the form. Any statement of a **material** fact may serve as the  
basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition except that **ONE** separate addi-  
tional page is permitted in answering Question No. 9.

**08CV508  
JUDGE KENNELLY  
MAG. JUDGE COLE**

D

## PETITION

MEDICAL CENTER FOR FEDERAL PRISONERS

1. Place of detention P.O. Box 4000, Springfield, MO. 65801-4000
2. Name and location of court which imposed sentence  
NORTHERN DISTRICT OF ILLINOIS
3. The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed:
  - (a) 21 USC 846 ATTEMPTED POSSESSION W/ INTENT TO DIST. COCAINE
  - (b) 21 USC 841(a)(1) POSSESSION W/ INTENT TO DISTRIBUTE COCAINE
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence ,
  - (a) 6-19-2003 , 360 MONTHS (CONCURRENTLY)
  - (b) 6-19-2003 , 360 MONTHS
  - (c) \_\_\_\_\_
5. Check whether a finding of guilty was made:
  - (a) After a plea of guilty \_\_\_\_\_
  - (b) After a plea of not guilty ☒ \_\_\_\_\_
  - (c) After a plea of nolo contendere \_\_\_\_\_
6. If you were found guilty after a plea not guilty, check whether that finding was made by:
  - (a) a jury ☒ \_\_\_\_\_
  - (b) a judge without a jury \_\_\_\_\_
7. Did you appeal from the judgement of conviction or the imposition of sentence?  
(☒) YES ( ) NO
8. If you did appeal, give the following information for each appeal:
  - (a) (1) Name of court 7TH CIRCUIT COURT OF APPEALS
  - (2) Result DENIED
  - (3) Date of result OCT 29, 2004
  - (4) Citation or number of opinion NO. 03-2747
  - (5) Ground raised (list each)
    - (a) DOWNWARD DEPARTURE

- (b) \_\_\_\_\_  
 (c) \_\_\_\_\_  
 (d) \_\_\_\_\_

- (b) (1) Name of court \_\_\_\_\_  
 (2) Result \_\_\_\_\_  
 (3) Date of result \_\_\_\_\_  
 (4) Grounds raised (list each)  
 (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_  
 (d) \_\_\_\_\_

**CAUTION:** If you are attaching a sentence imposed under a federal judgement, you must first file a direct appeal or motion under U.S.C. § 2255 in the federal court which entered the judgement.

9. State **CONCISELY** every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting ground. If necessary, attach a **SINGLE** page only behind this page.

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

- (a) Ground one PETITIONER'S COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE AT TRIAL AND SENTENCING FOR FAILING TO BRING FORWARD EVIDENCE THAT NO GRAND JURY INDICTMENT EXISTED CHARGING PETITIONER WITH THE CHARGE OF "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE", TO WHICH CHARGE THE PETITIONER IS FACTUALLY AND ACTUALLY INNOCENT.

Supporting **FACTS** (tell your story **BRIEFLY** without citing cases or law).

**CAUTION:** You must state facts not conclusions in support of your grounds. A rule of thumb to follow is - who did exactly what to violate your rights at what time and place.

1. FOREMOST PETITIONER (DOWELL) AVERS THAT "NO" TRUE GRAND JURY INDICTMENT WAS EVER PROPERLY RETURNED CHARGING HIM WITH "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE" IN VIOLATION OF 21 U.S.C. § 841 (a)(1). A COPY OF THE "PURPORTED" GRAND JURY INDICTMENT IN THIS MATTER REFLECTS THAT DOWELL WAS CHARGED ON JULY 29, 1999 WITH TWO (2) COUNTS OF "ATTEMPTED POSSESSION (CONTINUED ON PAGE NO. 7)

(b) Ground Two

Supporting **FACTS** (Tell your story **BRIEFLY** without siting cases or law).

(c) Ground Three

Supporting **FACTS** (Tell your story **BRIEFLY** without citing cases or law).

(d) Ground Four

Supporting **FACTS** (Tell your story **BRIEFLY** without siting cases or law).

10. Have you filed previous petitions for habeas corpus, motion under Section 2255 of **Title 28, United States Code**, or any other applications, petitions or motions with respect to this conviction?

( ☒ ) **Yes** (    ) **No**

11. If your answer to Question No. 10 was yes, give the following information:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Result \_\_\_\_\_

(5) Date of result \_\_\_\_\_

(6) Citation or number of any written opinions or orders entered pursuant to each disposition.

(b) (1) Name of court \_\_\_\_\_

(2) Nature of proceedings \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Result \_\_\_\_\_

(5) Date of result \_\_\_\_\_

(6) Citation or number of any written opinions or orders entered pursuant to each disposition.

12. If you did not file a motion under Section 2255 of **Title 27/8, United States Code**, or if you filed such a motion and it was denied and why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

NEWLY DISCOVERED EVIDENCE

(5)

13. Are you presently represented by counsel? ( ) Yes (✓) No

If so, name, address and telephone number \_\_\_\_\_

Case name and court \_\_\_\_\_

14. If you are seeking leave to proceed in forma pauperis, have you completed the declaration setting forth the required information?

(✓) Yes ( ) No

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceedings,

\_\_\_\_\_  
Signature of Attorney (if any)

I declare ( or certify, verify, or state ) under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 12, 2008

Milton Dowell (Date)  
Signature of Petitioner

WITH INTENT TO DISTRIBUTE COCAINE" A VIOLATION OF 21 U.S.C. § 846. EXHIBIT A, pp. 1-2. HOWEVER, UNMISTAKABLY, AS THE "JUDGMENT IN A CRIMINAL CASE" IN THIS MATTER DEMONSTRATES, DOWELL WAS TRIED, CONVICTED AND SENTENCED FOR ONE (1) COUNT OF ATTEMPTED POSSESSION WITH INTENT TO DISTRIBUTE COCAINE AND ONE (1) COUNT (COUNT TWO (2)) POSSESSION WITH INTENT TO DISTRIBUTE COCAINE. 1.D. AT 3-4. LIKEWISE THE PRESENTENCE INVESTIGATION REPORT INDICATES SUCH. 1.D. AT 5. MOREOVER, IN ONE OF THE DISTRICT COURT'S ORDERS IT CLEARLY STATES "HOWEVER, DEFENDANT WAS CONVICTED OF ATTEMPTED POSSESSION WITH INTENT TO DISTRIBUTE COCAINE; 21 U.S.C. § 846 (a) (1) [SIC] AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, 21 U.S.C. § 841 (a) (1)." 1.D. AT 6.

2. DOWELL PRESENTS NEWLY DISCOVERED EVIDENCE OF WHICH HE COULD NOT HAVE DISCOVERED EARLIER. THROUGH DUE DILIGENCE THEREABOUTS APRIL 27, 2007, DOWELL RECEIVED NEWLY DISCOVERED EVIDENCE THAT NO TRUE GRAND JURY INDICTMENT EXISTS CHARGING HIM WITH "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE" 1.D. AT 7; (7)

( PLEASE NOTE THAT THE DISTRICT COULD NOT LOCATE A FINAL SIGNED COPY OF THE... INDICTMENT YOU REQUESTED ).

3. DOWELL IS AGGRIEVED IN THIS MATTER IN THAT HE WAS UNLAWFULLY CHARGED, TRIED AND CONVICTED OF "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE" AND CORRELATIVELY UNLAWFULLY RECEIVED THE "MINIMUM" [EMPHASIS SUPPLIED] 30 YEAR SENTENCE THAT ATTACHES. NOTABLY, THE CHARGE OF "ATTEMPTED ~~TO~~ POSSESSION WITH INTENT TO DISTRIBUTE COCAINE" CARRIES A MINIMUM SENTENCE OF 10 YEARS. UNDENIABLY, A FUNDAMENTAL MISCARRIAGE OF JUSTICE HAS OCCURRED IN THE CASE AT BAR.

4. ON JULY 23, 2003 DOWELL WAS COMMITTED TO THE FEDERAL BUREAU OF PRISONS AND HAS THEREFORE BEEN HELD UNDER AN ILLEGAL SENTENCE, JUDGMENT AND COMMITMENT OF "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE." AN UNLAWFUL PERIOD OF 4 1/2 YEARS IN VIOLATION OF THE UNITED STATES' CONSTITUTION. ID. 3-4.



5. DOWELL'S COUNSEL AT TRIAL AND AT SENTENCING WAS CLEARLY INEFFECTIVE FOR PERMITTING COURT PROCEEDINGS TO BE BROUGHT AND TO BE HAD AGAINST DOWELL, FOR A CHARGE UPON WHICH NO GRAND JURY HAD RETURNED A TRUE INDICTMENT CHARGING SUCH. OF WHICH DOWELL SUFFERED EXTREME PREJUDICE IN THAT HE HAS BEEN ILLEGALLY INCARCERATED FOR 4 1/2 YEARS FOR A CRIME WHICH HE DID NOT COMMIT, IS ACTUALLY INNOCENT OF, AND MOREOVER, FOR WHICH NO GRAND JURY EVER RETURNED A TRUE INDICTMENT AGAINST HIM TO BE PROSECUTED UNDER [EMPHASIS SUPPLIED].

6. DOWELL RESPECTFULLY MOVES THIS COURT TO HOLD AN EVIDENTIARY HEARING AND FOR ASSIGNMENT OF COUNSEL.

### CLOSING ARGUMENT

BASED UPON THE FOREGOING CIRCUMSTANCES STATED, DOWELL AVERS THAT HE IS ACTUALLY INNOCENT. MOREOVER, THAT THE GOVERNMENT SHOULD BE PUT TO ITS PROOF. PRODUCE A "SIGNED" [EMPHASIS SUPPLIED] TRUE

GRAND JURY INDICTMENT WHICH PROPERLY [EMPHASIS SUPPLIED] CHARGES DOWELL WITH HAVING COMMITTED THE CRIME OF "POSSESSION WITH INTENT TO DISTRIBUTE COCAINE" IN VIOLATION OF 21 U.S.C. § 841 (a)(1). IN THE EVENT THE GOVERNMENT FAILS TO PRODUCE ANY SUCH GRAND JURY INDICTMENT, LAW AND JUSTICE DICTATE THAT THIS WRIT OF HABEAS CORPUS 28 USC § 2241 BE GRANTED, AND THAT DOWELL BE IMMEDIATELY RELEASED FROM CUSTODY.

SEE ALSO: SENTENCING TRANSCRIPT VOL. 4 AT P. 4  
EXHIBIT A, p. 8.

CERTIFICATE OF SERVICE

I THE UNDERSIGNED DECLARE UNDER PENALTY  
OF PERJURY ~~THAT~~ IN COMPLIANCE WITH  
28 USC §1746 THAT I MAILED TRUE COPY  
OF 28 USC §2241 WITH EXHIBIT A, AND  
APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF FEES AND AFFIDAVIT, FIRST CLASS POSTAGE  
PREPAID ON THIS 15 DAY OF JANUARY 2008  
ADDRESSED TO:

MARIBEL FERNANDEZ-HARNATH  
ASST. U.S. ATTORNEY  
U.S. ATTORNEY'S OFFICE  
219 SOUTH DEARBORN ST., 5<sup>TH</sup> FL.  
CHICAGO, ILLINOIS 60604

x/ *Michael Howell*  
ORIGINAL SIGNATURE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JUDGE AMERSON

UNITED STATES OF AMERICA

v.

MILTON DOWELL

99 CR 0555

No.

Violation: Title 21,  
United States Code,  
Section 846, 841(a)(1)

Count One

The SPECIAL APRIL 1998 GRAND JURY charges:

On or about October 1, 1998, at Lansing, and elsewhere in the  
Northern District of Illinois, Eastern Division,

MILTON DOWELL,

defendant herein, knowingly and intentionally attempted to possess  
with the intent to distribute approximately one kilogram of  
mixtures containing cocaine, a Schedule II Narcotic Drug Controlled  
Substance;

In violation of Title 21, United States Code, Sections 846 and  
841(a)(1).

EXHIBIT A

①

Count Two

The SPECIAL APRIL 1998 GRAND JURY further charges:

On or about October 22, 1998, at Matteson, and elsewhere in  
the Northern District of Illinois, Eastern Division,

MILTON DOWELL,

defendant herein, knowingly and intentionally attempted to possess  
with the intent to distribute approximately 1/4 kilogram of  
mixtures containing cocaine, a Schedule II Narcotic Drug Controlled  
Substance;

In violation of Title 21, United States Code, Sections 846 and  
841(a)(1).

A TRUE BILL:

---

F O R E P E R S O N

---

UNITED STATES ATTORNEY

7-11-11 11:44:19 2-12-02

# UNITED STATES DISTRICT COURT

NORTHERN

District of

ILLINOIS

UNITED STATES OF AMERICA

V.

MILTON DOWELL

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number:

99 CR 555-1

William Gavras

Defendant's Attorney

### THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) ONE (1) and TWO (2) after a plea of not guilty.

DOCKETED  
JUN 23 2003

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21:846, 841(a)(1)	Attempted possession with intent to distribute cocaine	10/1/1998	1
21:846, 841(a)(1)	Possession with intent to distribute cocaine	10/22/1998	2

The defendant is sentenced as provided in pages 2 through

5

of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 339-44-0697

Defendant's Date of Birth: 03/28/0952

Defendant's USM No.: 11920-424

Defendant's Residence Address:

2455 Lorraine

Cahokia, IL 62206

June 19, 2003

Date of Imposition of Judgment

Wayne R. Andersen  
Signature of Judicial Officer

Wayne R. Andersen, U.S. District Judge

Name and Title of Judicial Officer

June 20, 2003

Date

Defendant's Mailing Address:

Same as above

~~EXHIBIT~~

83  
3

DEFENDANT: DOWELL, MILTON,  
CASE NUMBER: 99 CR 555-1

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of THREE HUNDRED (360) SIXTY MONTHS.

☒ The court makes the following recommendations to the Bureau of Prisons:  
That the defendant be incarcerated at the Rochester, MN medical center.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

(4) ~~X~~

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA )

vs. )

MILTON DOWELL )

) PRESENTENCE INVESTIGATION REPORT

) Docket No. 99 CR 555-1

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Prepared For: Honorable Wayne R. Andersen  
United States District Court Judge

Prepared By: Michael I. Alper  
United States Probation Officer  
55 East Monroe - Suite 1500  
Chicago, Illinois 60603  
(312) 435-5351

Assistant U. S. Attorney  
Aylice M. Toohey  
219 South Dearborn  
U.S. Courthouse - 5th Floor  
Chicago, Illinois 60604  
(312) 886-1317

Defense Counsel  
William Gavras  
Attorney At Law  
118 A Chalan Santo Papa  
Hagatna, Guam 96910  
(671) 472-2302

Sentence Date: April 8, 2003; at 9:45 a.m.

Offense: Count One: Attempted Possession with Intent to Distribute Cocaine ( 21 U.S.C. §§846 and 841(a)(1)) - Mandatory Minimum 10 Years to Life Imprisonment. Mandatory Minimum 8 Years Supervised Release.

✓ Count Two: Possession with Intent to Distribute Cocaine (21 U.S.C. §§846 and 841(a)(1)) - 30 Years Imprisonment, Mandatory Minimum 6 Years Supervised Release.

Release Status: Released on a \$4,500 cash bond on August 5, 1999, with reporting to pretrial services. Bond revoked on December 19, 2002, and defendant surrendered to the custody of the U.S. Marshal on December 23, 2002.

Detainers: None

Codefendants: None

Related Cases: None

(5)



(Reserved for use by the Court)

**ORDER**

This matter comes before the Court on defendant Milton Dowell's motion for appeal bond. Defendant was sentenced to 360 months imprisonment by this Court on June 19, 2003. Defendant currently has an appeal pending before the United States Court of Appeals for the Seventh Circuit. Defendant has requested that this Court issue an appeal bond for both legal and medical reasons. Defendant argues that an appellate bond should be granted because he is likely to succeed on appeal, relying upon case law about the proof required to establish a conspiracy. However, defendant was convicted of attempted possession with intent to distribute cocaine, 21 U.S.C. § 846(a)(1), and possession with intent to distribute cocaine, 21 U.S.C. § 841(a)(1). As for the medical reasons, this Court carefully considered defendant's medical condition at sentencing. There is nothing in the record before us to indicate that any circumstances have changed or that defendant satisfies any of the requirements pursuant to 18 U.S.C. § 3143 for the issuance of a bond pending appeal. Thus, defendant's motion for appeal bond is denied.



Wayne R. Andersen  
United States District Judge

Dated: March 10, 2004



## U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information &amp; Privacy Staff

600 E Street, N.W., Suite 7300, Bicentennial Building

Washington, DC 20530-0001

(202) 616-6757 FAX: 616-6478 (www.usdoj.gov/usao)

Requester: Milton DowellRequest Number: 07-209Date of Receipt: 01-31-07

APR 27 2007

Subject: Self (specific public records)/ILN


Dear Requester:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

1. ☐ A search for records located in EOUSA - \_\_\_\_\_ has revealed no responsive records regarding the above subject.
2. ☒ A search for records located in the United States Attorney's Office(s) for the **Northern District of Illinois** has revealed no responsive records regarding the above subject. **We have interpreted your request as a request for a final signed copy of the Plea Agreement and Indictment. Please note that the district could not locate a final signed copy of the Plea Agreement or Indictment you requested. You may wish to contact the U.S. District Court Clerk for copies of these documents.**
3. ☐ After an extensive search, the records which you have requested cannot be located.
4. ☐ Your records have been destroyed pursuant to Department of Justice guidelines.
5. ☐ Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you have or will receive a separate response: \_\_\_\_\_.

This is the final action on this above-numbered request. You may appeal this decision on this request by writing within 60 days from the date of this letter to the **Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. Both the letter and envelope should be marked "FOIA Appeal." If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. §16.9.

Sincerely,

  
William G. Stewart II  
Assistant Director

1 that is the basis on which the guidelines should go forward.  
2 Obviously, if he appeals and gets the decision reversed, that  
3 would be different.

4 Okay. The defendant was convicted in Count One of  
5 attempted possession with intent to distribute cocaine, a  
6 violation of 21 U.S.C. 846 and 841(a)(1) and Count Two  
7 possession with intent to distribute cocaine, a violation of  
8 those same two sections. There were different amounts each  
9 time.

10 I think that there is a base offense level of 26 for  
11 a violation of those two sections under Guideline 2D1.1.  
12 Since the defendant's criminal conduct makes him responsible  
13 for approximately 1.25 kilograms of cocaine, that puts him in  
14 the 500 gram to two kilogram level, which is a level 26.

15 Does the Government agree with that?

16 MS. TOOHEY: Yes, your Honor.

17 THE COURT: Do you, Mr. Gavras?

18 MR. GAVRAS: Yes, sir.

19 THE COURT: And then the Government -- I don't think  
20 there should be any adjustments to that, either for role in  
21 the offense or offense characteristics. He has pled not  
22 guilty. He, obviously, didn't plead on a timely basis --  
23 plead guilty on a timely basis, so I don't see any adjustment  
24 for anything with respect to that adjusted offense level.

25 Does the Government agree with that?